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I, Christine Reilly, hereby certify that on this 5th day of June, 2006, I have had hand-delivered, and/or placed in the United States mail, and/or sent via electronic mail, a copy or copies of the foregoing **OPPOSITION TO APPLICATION FOR REVIEW** with sufficient postage (*where necessary*) affixed thereto, upon the following:

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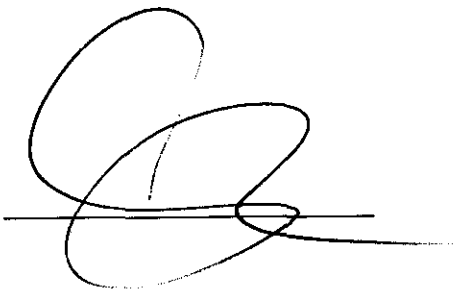

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EXHIBIT 1

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Arkansas Cable Telecommunications Association; Comcast of Arkansas, Inc.; Buford Communications I, L.P. d/b/a Alliance Communications Network; WEHCO Video, Inc.; and TCA Cable Partners d/b/a Cox Communications,	)	EB Docket No. 06-53
	)	
	)	
	)	
	)	EB-05-MD-004
	)	
Complainants,	)	
	)	
v.	)	
	)	
Entergy Arkansas, Inc.,	)	
	)	
Respondent.	)	

To: Office of the Secretary
Attn: The Honorable Arthur I. Steinberg
Administrative Law Judge

REPLY TO COMPLAINANTS' RESPONSE TO ENTERGY'S REPLY IN SUPPORT OF ITS MOTION TO ENLARGE, CHANGE AND DELETE ISSUES IN THE HEARING DESIGNATION ORDER

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Dated: June 1, 2006

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Arkansas Cable Telecommunications Association; Comcast of Arkansas, Inc.; Buford Communications I, L.P. d/b/a Alliance Communications Network; WEHCO Video, Inc.; and TCA Cable Partners d/b/a Cox Communications,	)	EB Docket No. 06-53
	)	
	)	EB-05-MD-004
Complainants,	)	
v.	)	
Entergy Arkansas, Inc.,	)	
Respondent.	)	

To: Office of the Secretary
Attn: The Honorable Arthur I. Steinberg
Administrative Law Judge

REPLY TO COMPLAINANTS' RESPONSE TO ENTERGY'S REPLY IN SUPPORT OF ITS MOTION TO ENLARGE, CHANGE AND DELETE ISSUES IN THE HEARING DESIGNATION ORDER

1. Entergy Arkansas, Inc. ("EAI") hereby submits its response to the "Response to Entergy's Reply in Support of Its Motion to Enlarge, Change, and Delete Issues in the Hearing Designation Order" submitted by Complainants in this proceeding.[1]

[1] Filed May 25, 2006, by Arkansas Cable Telecommunications Association, Comcast of Arkansas, Inc., Buford Communications I, L.P. d/b/a Alliance Communications Network, WEHCO Video, Inc., and TCA Cable Partners d/b/a Cox Communications ("Complainants").

I. THE COMPLAINANTS' HAVE FAILED TO REBUT THE NECESSITY OF REFORMING ISSUE 4(C)

2. As an initial matter, Complainants' general suggestion that revision to Issue 4(c) is unwarranted because the Commission is "obligated" to hear Complainants' dispute as framed in the initial complaint is unfounded. The Enforcement Bureau has discretion to "order evidentiary procedures upon *any* issues it finds to have been raised by the filings."[2] It is not required, as Complainants suggest, to order such procedures as to *all* issues raised.[3] Moreover, the issues for consideration in this forum are *not* the allegations of the complaint, but the issues designated for hearing by the Enforcement Bureau in the Hearing Designation Order ("HDO") and the evidence adduced through the discovery process with respect to these issues.

3. Even if the complaint itself were relevant, it is telling that Complainants do not, at any time in their Response, cite the complaint itself in suggesting that the Bureau has misrepresented or omitted relief requested. If they had, they would be forced to admit that their complaint focuses on assessing responsibility for corrections to poles where they have *already attached* and for which EAI has subsequently charged them for a violation as part of the safety inspection process.[4] Complainants' attempt to recast their complaint at this late stage should not be countenanced, nor need it even be considered.

---

[2] 47 C.F.R. §§ 1.1411 (in pole attachment complaint proceedings, the Commission "may, in its discretion, order evidentiary procedures upon *any* issues it finds to have been raised by the filings")(emphasis added); 0.111(a)(12) (the Enforcement Bureau may resolve complaints regarding pole attachments filed under 47 U.S.C. § 224); 0.111(a)(17) (the Enforcement Bureau may issue orders taking appropriate action in response to complaints, including hearing designation orders).

[3] *See also*, Hearing Designation Order, *Florida Cable Telecommunications Association, Inc. et al. v. Gulf Power Company*, EB Docket No. 04-381, 19 FCC Rcd 18718 (2004) (designating a single issue for hearing).

[4] *See, e.g.*, Complaint at ¶¶ 280-283(disputing allocation of "cost and responsibility" for violations "attributed" to Cox by EAI's inspection contractor); Complaint at ¶¶ 375-378 (disputing responsibility for violations "assigned" to Comcast).

4. Complainants go on to list five objections with respect to the proposed revision by the Bureau and/or the proposed revision by EAI: (1) the revisions would exclude poles to which Complainants seek to attach, but are not already occupying; (2) the revisions would exclude pole access situations in which EAI has not cited Complainants for a violation such as those for which allegedly unnecessary make-ready is required prior to attachment; (3) the revisions would exclude poles where EAI has allegedly caused a violation relative to a third-party attacher; (4) the scope of the term "violation" is disputed by Complainants; and (5) the revisions would limit the Complainants' ability to argue that EAI has allegedly discriminated against them. Each objection is unfounded, as addressed below.

5. With respect to Complainants' first objection, their reasoning is unsound. In the first instance, as noted herein, the Bureau is not required to designate all issues for hearing. Second, Issue 4(c) clearly relates only to those instances where the parties have disputed responsibility for correcting non-compliant conditions on poles where Complainants *have already attached.* This was clarified in the Bureau's Opposition to EAI's Motion, in which it explains that its intent in designating Issue 4(c) was to address only those poles "to which Complainants' facilities are attached," and *not* to direct the ALJ to review *all* of EAI's poles, including those to which Complainants are not attached.[5] Complainants' allegations that the Bureau's or EAI's proposed revisions would inappropriately restrict their ability to obtain relief for improper denial of access

[5] Bureau's Opposition at 3-4. Further, Complainants' own citations support the fact that redress is sought for poles to which they already have attachments. *See, e.g.*, Billingsly Reply Declaration at ¶¶ 26-27 (alleging that EAI "placed its electric facilities too low, placing Comcast into violation"); ¶ 46 (alleging that EAI has made installations since the cable buildout that have created violations with respect to cable facilities). The relevance of Complainants' citation to paragraphs 53 and 54 of the Billingsly Reply Declaration is unclear, as these paragraphs do not relate to engineering violations, but rather relate to Comcast's allegations that EAI benefited from the maps generated by the safety inspection process.

also ring hollow given that Issues 5(a) to 5(c) of the HDO already address those "access" issues that the Bureau felt appropriate to designate for hearing.

6. There can be no harm to Complainants related to the state of EAI's facilities on poles to which Complainants are not attached, but to which they may or may not at some point in the future seek access. A violation – irrespective of whether a violation is related to EAI's standards or the National Electrical Safety Code ("NESC") – must involve at least two facilities, one of which must be Complainants' facilities, in order for any basis for a claim to arise. Apart from the fact that retaining Issue 4(c) as initially posed in the HDO would place the FCC in the position of reviewing electric engineering practices without any nexus to a communications attachment, to do otherwise would raise serious ripeness issues that cannot be overlooked.

7. Complainants' second objection is similarly unfounded in light of Issues 5(a) to 5(c) of the HDO, which already address EAI's alleged conduct with respect to Complainants' ability to obtain access to poles. Thus, there is not support for their claims that instances where EAI has allegedly prohibited attachment until violations are corrected, but has not cited a violation to Complainants, would improperly be omitted from consideration.

8. The logic of Complainants' third point is also circular. They argue that the suggested revisions would exclude consideration of EAI's allegedly non-compliant conditions where EAI's facilities create a violation for a third party, which is in turn causing a violation relative to Complainants' facilities or which Complainants are allegedly required to correct prior to attachment. To the extent this is an access issue, it is addressed in Issues 5(a) to 5(c) of the HDO. To the extent that it relates to "continued" attachment, the situation that Complainants describe would be a situation in which they had been cited for a violation that they contend

should be the responsibility of another party, which is precisely what would be addressed under EAI's suggested revision.

9. With respect to Complainants' fourth point, that the revised language is inappropriate because it refers to "violations" and Complainants' dispute what constitutes a "violation," their own position undermines this assertion. Complainants have consistently asserted that EAI has *over* cited Complainants for violations, in that violations of EAI's standards or standards that could fall within an exception to the NESC are not "violations" at all.[6] The inclusion of poles where EAI has cited Complainants for violations, as suggested by EAI's revised issue, would therefore be similarly *over* inclusive of the universe of poles that would be reviewed. That is, under Complainants' restrictive definition of "violation," fewer poles would be reviewed by the ALJ than poles under what Complainants' claim is EAI's broader definition of a "violation." Regardless, simply identifying a pole for review because EAI has cited a violation on the pole does not implicate the need first to examine the term "violation."

10. Finally, Complainants' suggestion that the proposed revisions to Issue 4(c) would impair their ability to argue that EAI has allegedly discriminated against the Complainants overlooks the fact that Issue 6 of the HDO specifically addresses the question of whether EAI has engaged in discrimination in favor of other communications companies. Its objection, therefore, must be rejected.

II. EAI'S APPLICATION FOR REVIEW DOES NOT PRECLUDE CONSIDERATION OF ITS MOTION TO ENLARGE

11. On May 19, 2006, EAI filed an Application for Review ("Application") with the full Commission arguing *inter alia* that the Bureau's HDO, and specifically the jurisdictional conclusions in paragraphs 8 to12, constitute a final decision and should be overturned as *ultra*

[6] Complaint at ¶¶ 239-276.

vires under the Pole Attachments Act, in contravention of prior FCC precedent, and otherwise unsupported on the record.[7] The Application focused on Issues 1(c) and 5(b), which establish the NESC as the *de facto* ceiling for utility engineering standards, thus inappropriately placing the FCC in the position of regulating EAI as an electric utility rather than as a pole owner.[8] EAI also specifically cited its Motion to Enlarge in the Application, as well as the Bureau's Opposition to its motion in which the Bureau acknowledged that it did not intend to have the ALJ conduct a wholesale review of EAI's plant irrespective of whether one of Complainants' attachments was present.[9]

12. Conforming HDO Issue 4(c) to comport with the Bureau's intent and the scope of the Pole Attachments Act, however, need not be deferred until such time as the Application for Review is ruled upon. In the first instance, it cannot be predicted when the Commission will act on the Application, and a delay in ruling on the instant motion would therefore be prejudicial. Moreover, there would be no conflict with any decision on the Application for Review, as Complainants are free to appeal any decision on the pending Motion to Enlarge and note its objections at that time.[10]

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[7] Application for Review, EB-05-MD-004, EB Docket No. 06-53 (filed May 19, 2006).

[8] Application at ¶¶ 9-13.

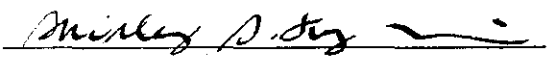
[9] *See, e.g.,* Application at n. 23.

[10] 47 C.F.R.§ 1.301.

III. CONCLUSION

13. **WHEREFORE, THE PREMISES CONSIDERED,** Entergy Arkansas, Inc. respectfully requests that the ALJ grant its Motion to Enlarge, Delete and Change the issues presented in the HDO, and reform the HDO accordingly.

Respectfully submitted,



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Dated: June 1, 2006

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I, David Rines, do hereby certify that on this 1st day of June 2006, a single copy (unless otherwise noted) of the foregoing "Reply to Complainants' Response to Entergy's Reply in Support of its Motion to Enlarge, Change and Delete Issues in the Hearing Designation Order" was delivered to the following by the method indicated:

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